CERTIFICATION OF BUSINESS PRACTICES AND ALGORITHMS OF DIGITAL PLATFORMS

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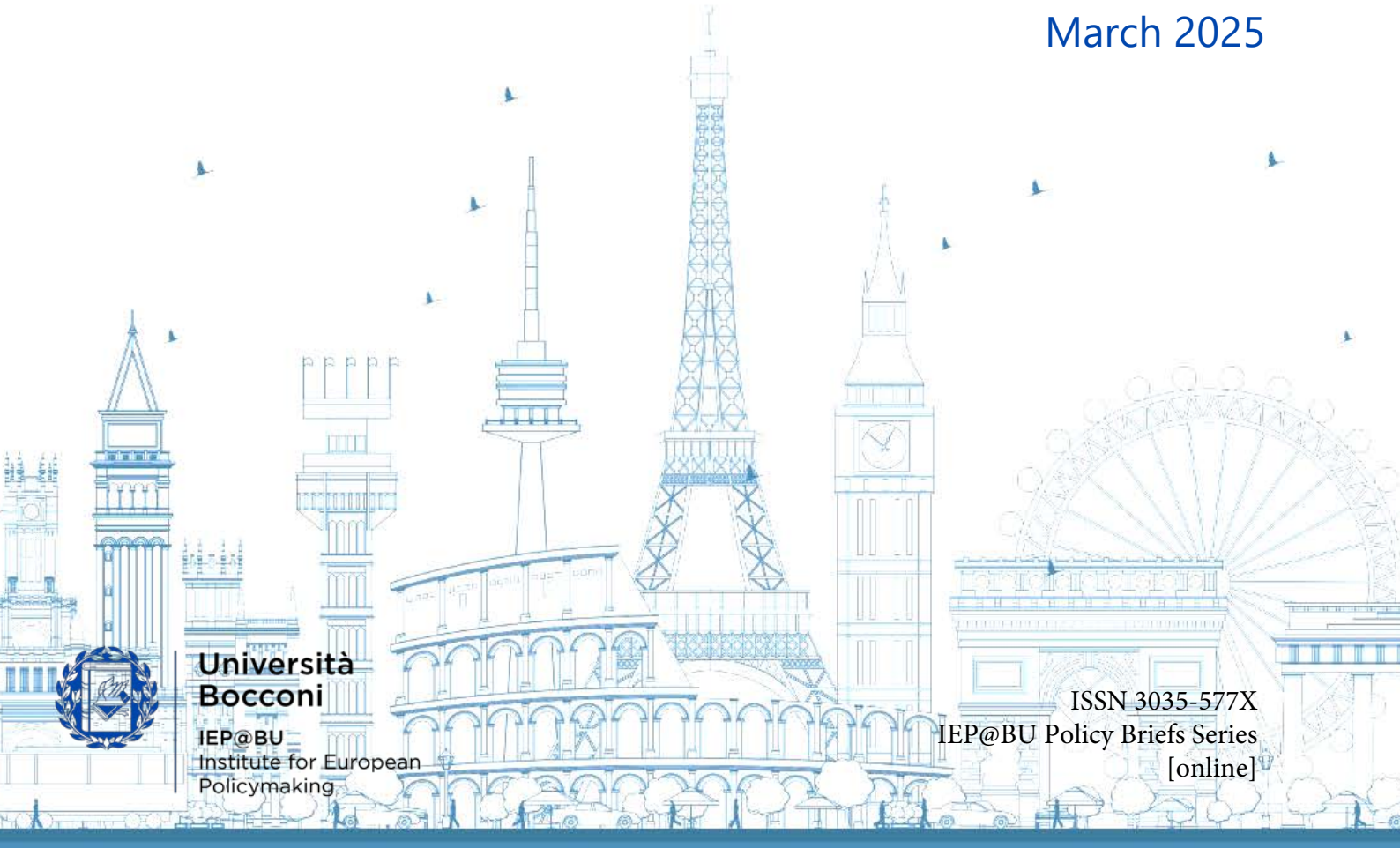

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Executive Summary

Europe has been relying on regulation to protect against the Big Tech firms, but regulation has reached its limits as the US administration relaxes its own regulation and challenges EU policies. In view of the shift in political regime, how can the EU cope with the Big Tech platforms and nurture European digital platforms that better serve society?

The recent IEP&BU report: *Rules That Empower* (De Gregorio et al., 2025) has recognized a limitation of the current regulation that seeks to prevent harms inflicted by digital platforms but has stifled innovation.

The current policy brief complements that report with another proposal that can help foster competition and innovation in digital markets.

Voluntary certification is a novel approach that can restrict the harmful practices of some dominant platforms and motivate and reward emerging platforms that align their practices with the public interest.

Eventually, those undergoing certification can gain a differentiation advantage and impose competitive pressure also on some dominant platforms that may revise their practices to regain market share. If needed, regulators can make certification mandatory for dominant platforms.

Certification involves setting standards for desirable practices and identifying undesirable practices using scorecards to help assess and benchmark digital platforms. The inspection would be carried out by an independent third-party organization with expertise and ability to scrutinize the inner working of platforms.

Digital platforms may misrepresent or disguise their business practices to avoid being caught violating regulations. Therefore, the inspection should include the algorithms of digital platforms. Algorithms can expose the true nature of practices and conclusively reveal how the platform conducts its operations.

Complementing regulation with certification of digital platforms can help protect against their harmful practices, as we discussed in our forthcoming article (Lavie, Pollicino, & Valletti, forthcoming).

Harmful Business Practices of Dominant Digital Platforms

Digital platforms have disrupted markets and restructured relations with stakeholders such as end users, business users, and competitors by enhancing coordination and aligning interdependent activities. These platforms have employed various business models to create and capture value by capitalizing on the benefits furnished to their members.

Whereas at their growth phase, platforms have attracted stakeholders by offering virtuous incentives and satisfying their needs, as they matured, dominant digital platforms created market failures that restricted the gains to their stakeholders.

They have leveraged their exclusive access to information and these stakeholders' dependence to exert excessive power over them (Gawer, 2022). Digital platforms have transformed the competitive landscape, but at what cost?

The Big Tech firms are among the largest in market capitalization, with valuations exceeding $1 trillion each. They control the technological infrastructure and dictate the way we communicate, shop, search for information, read news, and exchange ideas.

Their digital platforms use algorithms that classify, extract, and process personal data to predict and guide decisions, and leverage big data analytics to accumulate "algorithmic" and "computational" power.

This power allows them to execute "quasi-public functions without the need to rely on the oversight of a public authority" (De Gregorio, 2022). They have leveraged their dominance to violate end-user data protection and privacy rights, and exploit business users by engaging in practices and deploying algorithms that cause various harms.

We rely on Cennamo's (2021) taxonomy to identify types of digital platforms that cause harm. This taxonomy distinguishes multi-sided transaction markets that connect users such as businesses and their customers (e.g., Amazon Marketplace, Booking.com), and complementary innovation markets that enable other firms to introduce complementary products (e.g., Apple's iOS, Google's Android), from information markets that facilitate information exchange (e.g., Google Search, Microsoft Bing) including social media (e.g., Facebook, Instagram).

The harmful practices, powered by algorithms, serve the corporate purpose but incite extensive market dynamics that undermine end users' welfare and fair competition while squeezing business users. The harmful practices transpire despite applicable regulation and are not limited to a particular type of platform.

Although their business models differ, the platforms inflict various types of harm: they restrict access, introduce biases, overcharge end users, intrude on their privacy, facilitate addiction, mislead users, and abuse them.

Limitations of the Regulation of Digital Platforms

Regulators, especially in Europe, have sought to mitigate the excessive power and abuse of digital platforms (e.g., Pollicino, 2021). The current regulation of digital platforms often fails to effectively remedy the ramifications of digital platforms.

Both EU and US regulators have been slow to identify the platforms' harmful practices, with extensive harm inflicted before reacting *ex post*. Then, consensus-building, drafting, and approval of regulation takes years, with complications ascribed to the international scope of digital platforms, the lobbying by the Big Tech firms, and governments' conflicting interests, e.g., the Schrems saga in privacy regulation.

The DSP, TADPF, and new AI regulation strive to balance market-oriented and constitutional interests, but regulating an international phenomenon using legal instruments with strict territorial scope is restrictive, as also evidenced with the GDPR, DSA, CCPA, CPRA, CDA, and AAA. In fact, the struggle to promptly adapt to the rapid advancement of algorithms has resulted in a formalistic approach that inadvertently grants discretion to enforcement authorities, leading to fragmentation and legal uncertainty, as in the GDPR and AAA. The AIA, DSA, and DMA are rather ambiguous and complex, featuring loopholes, incompleteness, and inconsistencies.

Moreover, self-assessment, e.g., as in the AIA, coupled with lack of accountability and of judicial redress systems, incentivizes platform owners to engage in adverse selection and cost-benefit analysis of potential sanctions, with unfair practices still paying off. Self-regulation and weak enforcement rarely result in prosecution, with prolonged legal proceedings imposing inconsequential sanctions.

The offenders often manage to find workarounds or leverage recent regulation in their favor, and stakeholders do not always benefit, because they do not gain from the penalties that may be rolled over to them and because the risk-based approach of regulation such as the GDPR and AIA prohibits certain harmful practices rather than incentivizing virtuous conduct. Past harms are often irreversible, and the competition's loss cannot be restored.

Furthermore, the regulatory requirements reinforce the advantage of the Big Tech firms, which have the capacity for compliance, while deterring small emerging competitors and business users that are burdened by these requirements and are not incentivized by the regulation. This is the case for the DMA, which unlike the DSA operates on top of a web of concurrent legal frameworks.

Despite the expanding scope of regulation, it suffers from ambiguous requirements, lax enforcement, insufficient resources, and limited accountability. Moreover, for regulation such as the DSA, information asymmetry between regulators and platform owners enables the latter to avoid disclosure that carries penalties.

Hence, it is doubtful that the current regulation is sufficient to cope with the exploitation of stakeholders by digital platform owners. Additional mechanisms for protecting stakeholder interests should be considered, but what could be a complementary approach?

Voluntary certification of digital platforms

Instead of resorting to the familiar toolkit, we suggest a new approach. Voluntary certification of digital platforms can restrict the harmful practices of some dominant platforms but more importantly motivate contender platforms with stakeholder-oriented business models.

We do not expect all dominant platforms to forgo exploitative business models and certify, but certification can reward the virtuous conduct of emerging platforms such as *Mastodon, Thrive*

Market, Brightly, Signal, Proton and *Jitsi Meet*. Back in the 1990s companies have been undergoing ISO9001 certification.

Executives wondered whether their investments would pay off and that this seal of approval would attract customers and grow their business. Nowadays with more than a million certified sites, ISO9001 is needed to play, but those who were early to certify gained a differentiation advantage, much like emerging platforms can gain today.

By complementing protective regulation with a system that motivates platforms to better serve stakeholders, contender platforms can leverage this differentiation advantage and build reputation.

The purpose is to motivate and reward platforms that align their practices with the public interest. Eventually, those undergoing certification can impose competitive pressure also on some dominant platforms that may revise their practices to retain or regain market share.

What is voluntary certification? This approach involves setting standards for desirable practices and identifying undesirable practices using scorecards to help assess and benchmark digital platforms. The inspection would be carried out by an independent third-party organization with relevant expertise, resources, and inspection processes to scrutinize the inner working of platforms.

Certification can be useful when regulation is extensive but ambiguous and difficult to enforce. A credible system for verifying the claims of those that strive to serve their stakeholders calls for authenticating their ethical conduct. Certification can validate practices to ensure their compliance with standards, as in the examples of ISO9001 and B Corp certification for social impact.

Digital platforms may misrepresent their business practices, disguise them, or maintain secrecy, to avoid being caught violating regulations. Therefore, the inspection should go beyond practices that do not always reveal conduct to include also the algorithms of digital platforms.

Algorithms can expose the true nature and inner working of practices and conclusively reveal how the platform conducts its operations. Although the DSA and DMA already require access to data and algorithms, the certification would make this a default in every inspection rather than a rare occasion.

The inspection would include interviews with managers and programmers as well as a review of information systems with their documentation and software code. Scorecards would be used to consistently identify harms and determine if practices meet desirable standards.

The inspection could include sandbox testing for running algorithms and review of training data and performance metrices of AI algorithms. It can also rely on the wisdom of the crowd – anonymous tips from employees and reviews by academic and public nonprofit organizations that can point to potential harmful practices.

The fact that the certification is voluntary together with the reliance on third-party inspection and in-depth scrutiny of algorithms can reduce information asymmetry and increase transparency about the conduct of digital platforms.

Indeed, some platforms may object to the possible exposure of trade secrets, but common procedures could be applied for protecting IP, maintaining confidentiality and eliminating conflict of interest in audits, as with the ISO 27001 standard for information security systems. By releasing the results of inspections to the public, platform users can effectively benchmark digital platforms and make informed decisions.

The inspection team should be interdisciplinary, with skills in computer science, legal studies, and business administration.

Attracting top talent is not easy, but with competitive compensation and a sense of mission it is doable. You would be surprised how many professionals would be eager to travel the world and visit Tech companies that would listen to them. It is also possible to rely on the wisdom of the crowd, with anonymous tips from end users and employees of the inspected platforms.

Given the urgency and potential concerns about the legitimacy of the certifying body, it is advisable to assign the task to an established and experienced organization such as the B Lab or ISO that can rely on existing procedures while adapting its scorecards to the context of digital platforms.

It is quite clear that the Big Tech firms are not incentivized to certify despite growing public concerns about their harmful practices.

Social pressure is unlikely to make them revisit harmful practices. Most dominant platforms maintain their exploitative practices as long as the gains from such practices offset the gains from certification net the cost of revising their practices.

However, certification can enhance the reputation of emerging platforms. As much as the inspection can reveal harmful conduct, it can deter the use of harmful practices and help support platforms that rely on socially desirable practices.

The certification can help them draw more users, attract employees, grow their business, and enhance competitiveness without exploiting stakeholders. Therefore, certification would initially pay off to small entrepreneurial contenders. Some digital platforms would voluntarily undergo certification and may impose market pressure on the dominant platforms. If market pressure is insufficient, regulators may intervene to make voluntary certification mandatory for dominant platforms. Below we depict some of the possible scenarios for the adoption of certification.

Besides regulatory intervention, the adoption of certification depends on its differentiation value, network externalities, and competitive pressure. For it to work, users must recognize the value of certification.

Regulatory intervention could incentivize contenders to certify by offering funding to startups that develop prosocial platforms, by sponsoring the certifying organization, and making the certification fee proportional to platform size.

In conclusion, the certification of business practices and algorithms is a novel approach for aligning the practices of digital platforms with the interests of stakeholders and society. Promoting certification may be more beneficial than further developing regulation given its limitations.

- Whereas regulation penalizes harmful platforms, certification contributes to the reputation of platforms that protect stakeholder interests.
- Unlike regulation, certification rewards virtuous conduct and identifies undesirable yet unforbidden practices.
- Whereas it takes years to craft and deploy regulation or prosecute for violations, which does not benefit customers or competitors, the certification scorecard can be frequently updated.
- Unlike regulation that penalizes ex post, certification provides positive market incentives for improving business practices ex ante and helps differentiate platforms that serve stakeholders.
- Even though certification is voluntary, it is more balanced, independent, systematic, comprehensive, and meticulous in discerning business practices, e.g., by relying on third-party inspection as opposed to self-assessment.
- Whereas the regulation sets baseline expectations and penalizes deviations from requirements, certification can point to high standards to which digital platforms would aspire.

- Unlike regulation, certification motivates competition without undermining innovation.
- With certification, digital platforms that consider harmful practices would also weigh the reputational damage and loss of market share associated with such practices.
- Instead of balancing the power of digital platforms with that of the judiciary system, certification relies on market pressure to align corporate mission with the public interest.

How Certification overcomes the limitations of regulation

Limitations of Regulation	**Advantages of Certification**
- **Limited coverage**: only forbidden harmful practices	➔ **Extensive coverage**: also desirable practices and harmful yet unforbidden practices
- **Limited scope**: jurisdiction and geographical limits, focusing on a specific stakeholder group	➔ **Broad scope**: applies across geographies and multiple stakeholder groups
- **Weak motivation**: assumes misaligned societal and corporate values, and offers a negative incentive (avoiding penalties)	➔ **Strong motivation**: aligns societal and corporate objectives, and offers a positive incentive (market share)
- **Weak enforcement**: selective enforcement, reliance on self-regulation, and slow reaction to new harmful practices	➔ **Effective enforcement**: consistent for all certified, relies on third-party inspection with swift update of inspection scorecard
- **Limited remedies**: *ex post* remedies after harm was done may not benefit stakeholders	➔ **Immediate remedies**: *ex ante* remedies to avoid harm directly benefit stakeholders
- **Limited impact**: retains information asymmetry and fails to promote competition and innovation	➔ **Positive impact**: reduces information asymmetry and promotes competition and innovation

Certification can give rise to European digital platforms that better serve society and that would gain a differentiation advantage rather than make socially desirable practices a source of disadvantage. In view of the challenges faced by regulators in Europe and the dismissal of regulation in the US, certification could be the middle ground which could bridge the divide in regulatory approaches across the Atlantic.

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